UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:	)	Chapter 7
CHARLES WILLIAM ALTENHOF,	)	Case No. 00-42787-JBR
Debtor	)	
GAIL L. WALL,	)	
PLAINTIFF,	)	Adversary Proceeding 00-4218
v.	)	
CHARLES WILLIAM ALTENHOF,	)	
DEFENDANT	)	
	)	

MEMORANDUM OF DECISION WITH RESPECT TO ORDERS (1) ALLOWING MOTION OF PLAINTIFF IN ADVERSARY PROCEEDING, GAIL L. WALL, TO RESTORE THE ADVERSARY PROCEEDING TO ACTIVE STATUS AND (2) *SUA SPONTE* DISMISSING ADVERSARY PROCEEDING

This matter came before the Court for hearing on the Motion of Plaintiff in Adversary Proceeding, Gail L. Wall, to Restore the Adversary Proceeding to Active Status ("Motion to Reopen"). After due consideration of the relevant pleadings in this matter, it is hereby FOUND and ORDERED:

1. The Plaintiff commenced this Adversary Proceeding seeking to deny the Debtor a discharge and, in the alternative, seeking a determination that the debt arising out of a state court judgment was not dischargeable. At the time of the bankruptcy, the judgment held by the Creditor and a judgment awarded to the Debtor in a different action were on appeal to the state Appeals Court. This Court granted relief from the stay to prosecute the appeals.

2. By Memorandum and Order Pursuant to Rule 1:28, dated April10, 2003 ("Memorandum and Order"), the Massachusetts Appeals Court upheld the Plaintiff's $40,000 judgment as well as a $70,000 judgment in favor of the Debtor. The Appeals Court ordered that the judgments be offset. In footnote 7 of that decision, the Appeals Court stated "With the

judgments consolidated and so modified, Wall would be required to pay $18,613.20. We note that of the $25,000 that Wall received in the original loan from Altenhof, via the Hemenway trust assets, Altenhof managed to recoup $5,100 in legal fees to himself and prepaid interest to the trust. In the final accounting then, Wall received $19,900 in hand." In that same decision the Appeals Court expressly noted that Altenhof's judgment of $70,000 was based on a promissory note in the original amount of approximately $27,000[1] and interest. Memorandum and Order at 5.

3. Both parties then asked this Court to amend the Appeals Court decision. Wall, assuming that the judgment she held was not dischargeable, wanted instructions as to whom she should pay the netted amount as Altenhof's judgment was transferred prepetition to Altenhof's former wife, Mary Fox, in partial satisfaction of child support obligations pursuant to the June 9, 1997 order of the Middlesex Probate and Family Court. The Debtor requested a finding that the offset was not appropriate because the Appeals Court's *sua sponte* modification exceeded the scope of relief from the automatic stay and because there was no requisite mutuality.

4. Relying in part upon the *Rooker-Feldman* doctrine, the Court stayed the Adversary Proceeding for six months so that either or both parties could return to state court and seek relief in the state court actions that, over the years, had taken on several additional parties in a seemingly endless and bitter battle. As this Court noted in its June 12, 2003 Memorandum of Decision Staying Adversary Proceeding,

> As the [Massachusetts] Appeals Court noted , the dispute goes back over seventeen years and by the time it made its way to the Appeals Court, Wall's relatives and Altenhof's law partners had

[1]The Note dated June 12, 1989 is actually in the original principal amount of $25,000.

also become players in what the Appeals Court aptly described as "a series of Dickensian twists and turns...."

5. Prior to the expiration of the stay of the Adversary Proceeding, the Court, upon the Debtor's request, held a status conference and ordered the parties to file a status report. In his Status Report the Debtor stated he does not intend to seek relief from the state court because it was his position that the Appeals Court exceeded its authority by ordering the offset and the offset violated his right to a discharge under the Bankruptcy Code. The Debtor noted that Ms. Wall filed a motion with the Appeals Court "seeking a determination of the amounts to be offset" but represented as of January 2004, the date of Debtor's Report, the Appeals Court had not acted on the motion. Wall, in her status report, filed *pro se*, attached a jumble of pleadings and documents including the Appeals Court April 2003 Opinion and two Judgments After Rescript entered by the Appeals Court on July 9, 2003. It is unclear whether the Judgments were entered before or after Wall's motion to the Appeals Court. Her status report contains no reference to any motions she filed with the Appeals Court during the stay of the Adversary Proceeding.

6. Attached as part of Exhibit C to the Opposition of Mary Fox to the Motion to Reopen is a Motion of Plaintiff, Gail L. Wall, For Clarification of the Juidgment [sic] and To Further Extend the Restraining Order, dated September 9, 2003 and filed with the Massachusetts Appeals Court. Accompanying that pleading, and attached to Fox's Opposition as Exhibit F, is a letter from Wall's attorney, dated September 9, 2003, that states in part "The parties having a financial interest are the present holder of the note and mortgage from Gail L. Wall, by assignment, namely Altenhof's former wife, and an attorney who had previously represented Altenhof and

who has noticed an attorney 's lien on any funds due Altenhof."

7. Also attached in the Fox Opposition as part of Exhibit C are two pages only of what appears to be on order of the Massachusetts Appeals Court captioned "Order on Motion for Clarification" which expressly states: "On February 3, 2004, Wall wrote a responsive letter, on a pro se basis, stating that, 'I no longer require clarification. In light of the fact that the moving party has withdrawn the request for clarification, no further action is necessary with respect to clarification." Order on Motion for Clarification at 2 (footnote omitted).

8. On or about April 15, 2004 the Chapter 7 Trustee filed a Motion to Compromise the Controversy in the bankruptcy case. The Motion to Compromise stated *in bold and in italics* that the Trustee was moving "for an Order compromising the controversy involving Charles William Altenhof in the case of ***Charles William Altenhof, Debtor, Adversary Proceeding 00-4218.***" The Motion, however, sought to compromise a claim with Paul T. Shiels, a defendant in yet another state court action. Shiels is incorrectly identified as a Defendant in the Adversary Proceeding. The compromise resolves the estate's claims against Shiels in a malpractice action which the Debtor had commenced against Shiels; it does not address Wall's complaint regarding the dischargeability of her judgment.

9. As reasons for reopening this adversary proceeding, the Plaintiff acknowledges that she was served with a copy of the Chapter 7 Trustee's motion to compromise the above adversary proceeding but alleges that she "did not object because the Motion [to Compromise] made no allusion to or reference to the Adversary Proceeding." While the foregoing is not true, the Motion to Compromise is misleading in its characterization that it is a compromise of the Wall adversary proceeding. It is a compromise of a claim that has no bearing on the issue of

whether Wall's debtor should be discharged and consequently the adversary will be reopened.

10. The only issue in this Adversary Proceeding is whether Wall's debt is to be exempted from the discharge.[2] Wall argues that this adjudication is central to her ability to offset her debt against the judgment originally obtained by the debtor but subsequently transferred to his ex-wife. She also asks this Court to become embroiled in the actual mechanics of the offset and in effect, to clarify the very Appeals Court decision which she told the Appeals Court no longer needed to be clarified.

11. This Court joins '[t]he overwhelming majority of courts considering this issue [of the use of offset of a discharged debt defensively to reduce the debt owed to a debtor or his estate, which...have allowed discharged debts to be raised defensively in order to offset or reduce the creditor's liability on a prepetition obligation." *In re Ketelsen*, 282 B.R. 208, 212 (Bankr. E.D. Tenn. 2001).

12. Consequently whether or not Wall's claim is discharged is not relevant to her ability to use it defensively. Moreover to the extent that she is again asking this Court to act as a super-appeals court and clarify or correct what she perceives as the ambiguity or defect in the Appeals Court's Memorandum and Order, this Court declines to do so for the reasons set forth in its Memorandum of Decision Staying Adversary Proceeding dated June 12, 2003.

Separate Orders will issue.

Dated: April 21, 2005

Joel B. Rosenthal
United States Bankruptcy Judge

[2]Wall's count under section 727 was found to be frivolous and was dismissed.